



Republican Policy Committee

Don Nickles, Chairman Doug Badger, Staff Director 347 Russell Senate Office Building (202)224-2946

July 21, 1995

Lobby Reform

The lobbying reform issue may be on the Senate floor as early as Monday, July 24, 1995. As this paper was being written, negotiations between parties were continuing, and there is a reasonably good chance that a bipartisan agreement will be reached. If agreement is reached, the lobbying reform issue should be resolved relatively quickly.

By unanimous consent agreement of June 9, the Senate must proceed to a lobbying bill (Title I of S. 101) and a gift bill (Title II of S. 101) no later than July 28, 1995. (For additional details on the agreement, see order no. 124.)

Last Congress, the Lobbying Disclosure Act (S. 349) passed the Senate on May 6, 1993 by a roll call vote of 95 to 2. In conference, the lobbying bill and the gift ban bill (S. 1935) were combined. The conference report passed the House, but the Senate twice failed to invoke cloture (votes nos. 322 & 325 of Oct. 6 & 7, 1994), and the conference report died at the close of the 103rd Congress.

The lobbying provisions of S. 101 are similar to those of the 1994 conference report. However, the chief sponsors, Senators Levin and Cohen, have made a number of changes, including eliminating provisions on grassroots lobbying which created much opposition last year. A summary of the lobbying provisions of S. 101 begins on the next page. Senators Dole and McConnell and others have drafted a substitute amendment. A summary of a recent Dole-McConnell draft may be found beginning on page 4.

As noted above, however, by the time the issue reaches the floor, both sides may have agreed on an acceptable compromise.

BILL SUMMARY

Provisions of Title I of S. 101 (*Selected Sections*)

This is a summary of Title I of S. 101, the Levin-Cohen proposal. By the time the bill reaches the floor, these provisions may have been superseded by a bipartisan compromise agreement.

Section 101 is the short title, and *section 102* is congressional findings.

Section 103 is definitions. Virtually all of the key terms ("client," "covered legislative branch official," "lobbying activities," "lobbying contact," "lobbyist") are defined by the act, sometimes at length. Much of the "meat" of this measure is in the definitions: *The actual effect of the act on individuals may be determined as much by the definitions in section 103 as by any of the substantive provisions in other sections.*

Section 104 requires lobbyists (or an organization that has employees as lobbyists) to register with the Office of Lobbying Registration and Public Disclosure, which this bill creates (in section 107). No registration is required for persons or firms whose total income for "matters related to lobbying activities on behalf of a particular client" does not exceed \$2,500 during a six-month period. For an organization whose employees lobby, no registration is required if the total expenses "in connection with" lobbying activities do not exceed \$5,000 during a six-month period.

Among other things, a lobbyist registering under section 104 must disclose the name, address, and principal place of business of his clients and of any other organization that contributes more than \$5,000 toward the lobbying activities of the registrant during a six-month period if that organization participates significantly in the planning, supervision, or control of such lobbying activities.

Section 105 requires registered lobbyists to file reports semiannually. Total income from lobbying activities and total expenses in connection with lobbying activities must be estimated. A separate report must be filed for each client. The reports must contain a list of the contacts with the Senate and House of Representatives or their committees and with federal agencies.

Section 106 forbids lobbyists, lobbying firms and agents of foreign principals to provide a gift, whether directly or indirectly, to any Senator or Representative, any elected officer of either House of Congress, and any employee of any Member or committee. The word "gift" is defined broadly and encompasses contributions to legal defense funds and most charitable contributions made by a lobbyist on the recommendation of a Member or employee. A political contribution under the Federal Election Campaign Act is not defined as a gift. Certain gifts given

for nonbusiness purposes and motivated by a family relationship or close personal friendship are not prohibited. (This section together with Title II form the twin pillars of the proposed gift rules. This section regulates lobbyists; Title II regulates Members, officers, and employees of the Senate. They are meant to be read together, however.)

Section 107 establishes in the Executive Branch of the Federal Government the Office of Lobbying Registration and Public Disclosure. The office will be headed by a director who will be appointed by the President, with the advice and consent of the Senate, and who shall serve for a term of five-years and may be removed for cause. The director does not have "general audit or investigative authority," [subsec. 112(c)], but the extensive powers of the director (see, e.g., sec. 109) are a concern to many students of this bill.

Section 108 establishes the procedures for initial investigation of complaints and initial determinations on those complaints.

Section 109 sets up the procedure for assessing penalties when violations of the act occur. Hearings are required if requested by the person who is alleged to have violated the act. The director will make a final determination as to whether a violation occurred and what the remedy should be. For minor violations, civil penalties of up to \$10,000 may be assessed. For major violations, the penalties may be as high as \$100,000.

"No penalty shall be assessed under this section unless the Director [of the Office of Lobbying Registration and Public Disclosure] finds that the person or entity subject to the penalty knew or should have known that such person or entity was in violation of this title. In determining the amount of a penalty to be assessed, the Director shall take into account the totality of the circumstances, including the extent and gravity of the violation, whether the violation was voluntarily admitted and corrected, the extent to which the person or entity may have profited from the violation, the ability of the person or entity to pay, and such other matters as justice may require." Para. 109(e)(1).

Section 110 requires that written decisions of the Director be made available to the public. The section also restricts the release of certain information.

Section 111 allows decision of the director to be appealed to an appropriate United States court of appeals.

Section 112 provides that the act shall not be construed to prohibit or interfere with First Amendment rights and that the Act shall not be construed to prohibit, or to authorize the Director or any court to prohibit, lobbying activities or lobbying contacts regardless of whether such activities or contacts are in compliance with this Act.

Section 113 amends the Foreign Agents Registration Act (FARA) so that lobbyists for foreign entities generally would have to register under this Act. However, representatives of foreign entities who do not lobby would still be required to register under FARA.

Summary of Dole-McConnell Alternative Lobbying Reform Act

(Summary Prepared by Senator McConnell's Office, July 18, 1995)

This is a summary of a July 18 version of a Dole-McConnell compromise. By the time the issue reaches the floor, these provisions may have been superseded by a bipartisan compromise agreement.

Scope of the bill

1. Applies to lobbying of Congress only and includes efforts to lobby Members, officers and employees.
2. Does not create new federal agency to enforce its provisions.
3. Defines lobbying to include making more than one oral or written contact with legislative branch officials (including preparation and planning for such contacts) on behalf of a client for the purpose of influencing any matter pending before Congress.
4. Defines lobbyist as an individual who is employed or retained by a client for compensation to lobby and, of the time spent providing services for that client, 25 percent of it is spent lobbying for that client.
5. Does not exempt lobbying by government officials. [The Levin proposal exempts government officials.]

Duty to Register

1. A lobbying firm which receives at least \$25,000 for lobbying services (in a six-month period) on behalf of a client must register with the Clerk of the House and/or Secretary of the Senate.

The registration must list the client, as well as the individual lobbyists who engage in the lobbying, their addresses and phone numbers, and a statement of the general issues on which the lobbyist lobbies for the client, including bill numbers, where available.

2. An organization, association, coalition, or other entity which expends at least \$50,000 on lobbying (in a six-month period) must register with the Clerk of the House and/or Secretary of the Senate.

The registration must list the individual employees who act as lobbyists, their addresses and phone numbers, and a statement of the general issues on which the lobbyist lobbies, including bill numbers, where available.

If the registrant is a coalition or association, the registration must list any entity or individual who contributes \$10,000 or more to the lobbying effort and exercises control over the lobbying policies and practices.

3. Registration may be terminated by notifying the Clerk and/or Secretary that the registrant no longer lobbies for the client.

Duty to Report

1. A lobbying firm or organization (association, coalition or entity which engages in lobbying) must file a disclosure form with the Clerk of the House and/or Secretary of the Senate twice a year, containing:

- a. Name, business address, telephone number of the lobbyist and the client;
- b. A statement of the general issues, including bill numbers where available;
- c. A statement of income (if a lobbying firm) or expenses (if an entity which engages in lobbying) rounded to the nearest \$20,000. Where income or expenses do not exceed \$10,000, the registrant can so state.

2. A nonprofit entity may file its "990 Form" (filed with the Internal Revenue Service to maintain its tax exempt status) to satisfy the reporting requirements.

Enforcement

1. The Clerk of the House and the Secretary of the Senate will receive registrations and disclosure forms, review them for accuracy, and make them available to the public, with cross-referencing and cross-indexing so that a public roster of lobbyists is available to the public.

2. The Clerk and/or the Secretary will notify any lobbyist or lobbying firm that he or she may be in noncompliance.

3. If the lobbyist or lobbying firm has not remedied a defective filing within 60 days of being notified by the Clerk and/or Secretary, the matter may be referred to the U.S. Attorney for the District of Columbia. The Clerk and Secretary will also maintain a publicly available list of those lobbyists and lobbying firms who have been notified of possible noncompliance and who have not responded within 60 days.

4. Penalties include civil fines of up to \$100,000 and a prohibition from registering to lobby for up to five years for willful or intentional failure to remedy a defective filing within 60 days; and a criminal fine of up to \$250,000 and/or imprisonment for up to five years for repeated violations.

Staff Contact: Lincoln Oliphant: 224-2946